

Fiscal Analysis

General Identification and Description of Landforms

15A NCAC 07H .0305

General Use Standards for Ocean Hazard Areas

15A NCAC 07H .0306

Requesting the Static Line Exception

15A NCAC 07J .1201

Development Line Procedures

15A NCAC 07J .1301

15A NCAC 07J .1302

15A NCAC 07J .1303

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Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title	PROPOSED DEVELOPMENT LINE PROCEDURES AND AMENDMENTS TO THE GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS AND STATIC VEGETATION LINE EXCEPTION PROCEDURES
Citation	15A NCAC 07H .0305, 15A NCAC 07H .0306, 15A NCAC 07J .1201, and 15A NCAC 07J .1301 - .1303
Description of the Proposed Rule	15A NCAC 07J .1300 (1301, 1302, and 1303) creates procedures for requesting, approving, and managing an oceanfront Development Line, and establishes an alternative to the Static Vegetation Line Exception 15A NCAC 07J .1200 for oceanfront communities receiving a large scale beach fill project. Amendments to the General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306 and Static Vegetation Line Exception Procedures 15A NCAC 07J .1200 are proposed for the purpose of easing requirements by eliminating the mandatory 5-year waiting period and the 2,500 maximum square footage limit on structures.
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Authority	G.S. 113A-107; 113A-113; 113A-124
Necessity	The Coastal Resources Commission proposes the Development Line Procedures and amendments to current rules collectively allow local government to have less restrictive management options following a large scale beach fill project.
Impact Summary	State government: Minimal Local government: Yes Substantial impact: No Federal government: No

Summary

The North Carolina Coastal Resources Commission (CRC) requires that oceanfront development be set back from a defined reference line that is generally either the oceanward edge of natural vegetation, or a surveyed line for communities that have completed large beach nourishment projects.

The CRC is proposing amendments to create another reference line called a Development Line that would allow a local government to delineate the most oceanward location for new development. Development Line Procedures will be contained in Title 15A NCAC 07J .1300. This action also requires an amendment to 15A NCAC 07H .0305, General Description of Landforms, which is the CRC's rule that defines various coastal features and reference lines, and 15A NCAC 07H .0306 to establish use standards for the Development Line.

In addition to establishing the Development Line procedures and use standards, the CRC is also amending their existing rules governing Static Line Exception Procedures contained in 15A NCAC 07J .1201 and 15A NCAC 07H .0306. The intent of these amendments is to provide local governments with additional flexibility in managing oceanfront development.

Should a local government choose to adopt a Development Line for CRC approval, the costs to do so are anticipated to be minor. The economic benefits of adopting a Development Line for private property owners can range from moderate to significant depending on where a local government chooses to site the Development Line, but are not accurately quantifiable.

This proposal will have no impact on Department of Transportation projects or on DCM permit receipts.

The estimated effective date of these rules is July 01, 2016.

Description of Proposed Actions

Residential and commercial development built adjacent to the ocean shoreline may be vulnerable to erosion and storm surge. Under the NC Coastal Area Management Act (CAMA), hardened erosion protection structures are generally not allowed on the ocean shoreline; therefore, local governments use beach fill (nourishment) as a means to protect oceanfront property from storm damage and to address chronic erosion issues.

While the first line of stable-natural vegetation (FLSNV) has been used as an oceanfront setback measurement line since 1979, the CRC determined that the vegetation on nourished beaches was not "stable and natural" and should not be used for measuring oceanfront setbacks. In 1995 the CRC codified a method of measuring setbacks on nourished beaches that utilizes the surveyed pre-project vegetation line, which became known as the "static line." The CRC's static line rule was based on three primary issues: 1) evidence that nourished beaches can have higher erosion rates than natural ones, 2) no assurance that funding for future nourishment projects would be available for maintenance work as the original project erodes away, and 3) structures could be more vulnerable to erosion damage since their siting was tied to an artificially-forced system. The intent of the static line provisions has been to recognize that beach nourishment is an erosion response necessary to protect existing development but should not be a stimulus for new development on sites that are not otherwise suitable for building. Once a static line is established it does not expire.

Prior to 2009, a community that completed construction of a large-scale beach fill project was required to measure construction setbacks from the static line or the first line of stable-natural vegetation, whichever was more landward. Over time, the Commission found that some communities had demonstrated a long-term commitment to beach nourishment and maintenance of their nourished beaches. Due to this long-term commitment, the vegetation had become stable and migrated oceanward of the static line. In many cases, proposed development on lots within these communities could meet the required setback from the natural vegetation line, but could not be permitted since they did not meet the setback from the static vegetation line.

To recognize local government efforts to address erosion through long-term beach nourishment and offer relief from the Static Vegetation Line requirements, the CRC adopted Static Vegetation Line Exception Procedures in 2009. The procedures require local communities to petition the CRC for an exception to the static line that allows property owners within that community to measure construction setbacks from the first line of stable-natural vegetation instead of the static line, under specific conditions. To qualify for the exception, communities must demonstrate that they have a source of sand and a funding mechanism to continue beach nourishment for at least 30 years. The CRC also requires communities to update this information every five years in order to maintain the exception.

Several local governments have applied for and received Static Line Exceptions, and have now had them in place for up to six years. Some of these local governments have since expressed concerns regarding difficulties and costs associated with the static vegetation line rules and its exception procedures. The CRC is proposing new Development Line rules and amendments to the Static Vegetation Line Exception procedures to address these concerns.

DEVELOPMENT LINE (new)

The CRC is adding a new section for Development Line Procedures, 15A NCAC 07J .1300.

1. 15A NCAC 07J .1301 Requesting the Development Line
Describes the procedures for who may request a Development Line, how it is to be delineated, what information needs to be provided to the CRC, and who may request changes to the Development Line. Also explains where requests are to be submitted and when the CRC will consider them.
2. 15A NCAC 07J .1302 Procedures for Approving the Development Line
Describes the process for presenting requests to the CRC, and the criteria and timeframe for a CRC decision. Specifies how and when petitioners will be notified of the CRC's decision. Indicates how petitioners may appeal a CRC decision.
3. 15A NCAC 07J .1303 Local Governments and Communities with Development Lines
States that the Division of Coastal Management will maintain a list of approved development lines and related information about them, and make this information available for public inspection upon request.

STATIC VEGETATION LINE EXCEPTION (amendments)

Additional amendments to the General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306 and Static Vegetation Line Exception Procedures 15A NCAC 07J .1201 are proposed for the purpose of easing regulatory burdens. The amendments eliminate the mandatory 5-year waiting

period before communities can apply for a Static Line Exception, and remove the 2,500 maximum square footage limit on structures built under the exception. An amendment to 07J .1201 also allows groups of local governments to petition the CRC jointly for a Static Line Exception in order to benefit adjacent communities such as those on Bogue Banks by enabling them to share costs. The most significant proposed amendments to the static line exception rules are as follows:

1. Waiting period. Current rules require communities to wait a minimum of five years after they receive a static vegetation line before they may submit a request to the CRC for a Static Vegetation Line Exception. Because the SVL identifies both where the erosion hazard is in proximity to oceanfront structures, and the location of where the first line of stable and natural vegetation was just prior to the construction of a large-scale beach nourishment project, the waiting period was included in the initial rule language to establish a minimum period of time needed for a newly constructed beach to equilibrate (return to a more natural state), and to also allow sufficient time needed for any new oceanward growth of vegetation to be considered both stable and natural. However, after reviewing this criteria, it was determined that this requirement in rule language serves no real benefit because, both the natural processes (beach erosion and rate of vegetation growth), and maintenance cycles of the initial large-scale beach nourishment project determine how soon a community may benefit from oceanward growth of vegetation, the waiting requirement is unnecessary. Therefore, the amendment will eliminate this waiting period, allowing communities to apply immediately after their static line is established, even though there is no benefit until the vegetation grows oceanward and is considered stable and natural.
2. Building size restriction. Total floor area for new construction authorized under a Static Vegetation Line Exception is currently limited to 2,500 square feet. The intent of this rule was to establish an allowable development footprint for undeveloped oceanfront lots that were considered to be non-conforming prior to the construction of a large-scale nourishment project. However, considering that a structure must meet setback requirements already defined in 15A NCAC 07H.0306, in addition to setbacks defined in local ordinances, there is no justifiable benefit gained in keeping the 2,500 square feet restriction in current rules. The proposed amendment removes this limitation.
3. Requesting an exception. Currently, only individual local governments may request a Static Vegetation Line Exception from the CRC. The proposed amendments will allow groups of local governments and qualified property owners' associations to request exceptions.

Anticipated Impacts

Local Governments:

Requesting a Development Line or Static Vegetation Line Exception is voluntary for communities; therefore, these new rules do not require local governments to incur any additional expenditures unless they choose to do so. Currently, there are 16 communities with static vegetation lines (see first column in Table 1 below). Of those, eight have CRC-approved Static Vegetation Line Exceptions (Ocean Isle, Carolina Beach, Wrightsville Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, and Atlantic Beach).

Under the proposed amendments, local governments will have three oceanfront development setback options:

- 1) Continue to measure setbacks from the Static Vegetation Line or FLSNV, whichever is applicable;
- 2) Request a Static Vegetation Line Exception from the CRC, if they already have a Static Vegetation Line, and measure setbacks from first FLSNV or Static Line, whichever is more restrictive, and no construction oceanward of the landward-most adjacent neighbor; or
- 3) Request a Development Line from the CRC and measure setbacks from first line of stable-natural vegetation, with no construction oceanward of the Development Line.

The proposed Static Vegetation Line Exception rule amendments and Development Line Rule are two voluntary options offered to local governments wanting to utilize the existing first line of stable and natural vegetation instead of the pre-project static vegetation for the siting of new oceanfront development. Therefore, the impact of this proposal to local governments is a result of choosing between different options:

- a) If a community chooses not to do anything different than what current rules allow, they would incur no impact;
- b) If one of the eight communities that currently has a SVL Exception chooses to opt for the Development Line, they would incur a cost savings by no longer having to demonstrate a commitment to maintain a beach nourishment project and to endure any five-year recurring costs associated with the identification of sand sources and financial resources that are required by the CRC to receive an approved SVL Exception. The estimated cost for a Development Line to be surveyed is approximately \$1,200 per mile times the length of the SVL, which would result in a one-time cost for those communities opting for a Development Line. Therefore, the average cost of the eight communities that already have a SVL exception would be about \$4,000. In comparison, under the current rule, these communities would continue to incur the five-year reauthorization report cost averaging \$3,500 per exception (see Table 1 for further details). So the net present value of the saving over 10 years could be \$1,800 (using a 7% discount rate);
- c) If a community currently has a Static Vegetation Line and does not have a Static Vegetation Line Exception may find it beneficial to incur the cost of obtaining a Development Line, average of \$5,750 (see Table 1), if the additional value to property owners outweighs that cost (see discussion of impact on property owners below).
- d) If a community who currently does not have a Static Vegetation Line installs a large-scale beach nourishment project in the near future, and opts for the SVL Exception, they would incur the cost of the SVL exception (\$9,000) for the initial cost of compiling the necessary information to present to CRC and the five-year reauthorization (\$3,500), on average (see Table 1). If a community chooses the Development Line instead, they would incur the cost of the Development line of between \$1,000 and \$12,500. On average, their savings would be \$6,000 in net present value terms assuming they would have started next year; and

Table 1. Estimated Cost of Development Line versus Cost of Static Vegetation Line Exception

Location	SVL Exception Costs			<i>Estimated DL Costs</i>
	Initial SVL Exception	SVL Exception 5-Year Reauthorization	SVL Exception (6-Year Total)	<i>Development Line Survey</i>
Ocean Isle	\$300	\$159	\$459	<i>\$3,840</i>
Oak Island	N/A	N/A	N/A	<i>\$10,060</i>
Caswell Beach	N/A	N/A	N/A	<i>\$2,830</i>
Bald Head Island	N/A	N/A	N/A	<i>\$3,324</i>
Kure Beach	N/A	N/A	N/A	<i>\$3,382</i>
Carolina Beach	\$13,250	\$0	\$13,250	<i>\$3,987</i>
Wrightsville Beach	\$13,250	\$2,320	\$15,570	<i>\$3,891</i>
Topsail Beach	N/A	N/A	N/A	<i>\$5,457</i>
North Topsail Beach	N/A	N/A	N/A	<i>\$5,570</i>
Emerald Isle	\$13,775	\$5,120	\$18,895	<i>\$6,671</i>
Indian Beach	\$5,800	\$5,120	\$10,920	<i>\$2,285</i>
Salter Path	\$5,800	\$5,120	\$10,920	<i>\$1,009</i>
Pine Knoll Shores	\$11,600	\$5,120	\$16,720	<i>\$5,961</i>
Atlantic Beach	\$7,000	\$5,120	\$12,120	<i>\$5,055</i>
Rodanthe (Mirlo Beach)	N/A	N/A	N/A	<i>\$3,079</i>
Nags Head	N/A	N/A	N/A	<i>\$12,430</i>
Sum	\$70,775	\$28,079	\$98,854	\$78,830
Average	\$8,847	\$3,510	\$12,357	\$4,927

Assumptions:

SVL Exception costs are real expenditures reported by communities with Static Vegetation Line Exceptions (Table 1), and are used for the following assumptions to estimate costs for those communities without an exception, or those considering the Development Line option.

- All other costs and benefits between a Static Vegetation Line Exception and a Development Line are equal, except for the initial costs to adopt, and ongoing reporting costs for a Static Vegetation Line Exception, as the resulting setbacks from the two options would be the same.
- Communities without an Exception can anticipate an average first-time cost of approximately \$9,000 to assemble require information to be submitted to the CRC for an approval based on current information.
- Communities choosing to seek a SVL re-authorization every five-years can anticipate average costs to be approximately \$3,500.
- Based on estimated costs (from discussion with staff at *CB&I* and *Geodynamics*), a Development Line is likely to cost approximately \$1,200 per mile, or \$4,000 per day to survey. Averaging lengths of current Static Vegetation Lines, it is assumed that an average total cost to survey a Development Line to be approximately \$5,000.
- Based on these estimates, it is assumed that costs will remain constant over the next few years.

- The Static Vegetation Line Exception and the Development Line address non-conforming lots similarly, in that each have to meet construction setbacks measured from the first line of stable and natural vegetation.
- Local governments interested in Static Vegetation Line Exceptions and Development Lines are already undertaking beach fill projects and in some cases already assume the costs of long-term commitments to beach nourishment.
- If a community opts for a Development Line and discontinues the beach fill projects, the construction setback requirements from the FLSNV would prevent structures from being built too close to the beach.
- Currently, 16 out of 34 oceanfront communities have Static Vegetation Lines. Since 1996, at least one oceanfront community has installed a large-scale beach nourishment project once every five years; thus qualifying them for a Static Vegetation Line. Based on this historic trend, it can be assumed that the number of communities with a Static Vegetation Line is unlikely to change much in the next five to ten years.

Public infrastructure (e.g., parking lots and public utilities) has a minimum setback factor of sixty (60) feet or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

Private Property Owners:

The static vegetation rules apply only when oceanfront property owners are seeking a Coastal Area Management Act (CAMA) permit for the purpose of development. Development includes construction of new a structure, or replacement of an existing structure defined as requiring more than fifty percent (50%) repair or re-construction.

To the extent that a community is more likely to apply for a Development Line under the proposed rules than it would have for a Static Vegetation Line Exception under the current rules is uncertain at this time. In terms of property value, any potential benefits gained would be the same for both the SVL Exception and Development Line alternatives. Each allow for construction setbacks to be measured from First Line of Stable and Natural Vegetation instead of the potentially more restrictive Static Vegetation Line; thus resulting in a net impact of zero.

Private property owners may experience some unquantified increase in the value of their property, or opportunity cost, if the community in which their property is located has a Static Vegetation Line and chooses to apply for a Static Line Exception or a Development Line. In the reverse scenario where they do not apply for an Exception or Development Line, should vegetation growth occur oceanward of the Static Vegetation Line, property owners would still be required to measure setback from the more restrictive SVL, thus potentially keeping more private-properties in a non-conforming status and negatively affecting their property values and development options. Based on discussions with coastal NC realtors, it is difficult to determine how much loss would be avoided by opting for an Exception or Development Line when a structure is considered non-conforming since resale value is influenced by a wide range of factors, such as; amenities, location, proximity to sandbag structures, and the overall willingness of the buyer to take risks.

These proposed amendments to the Static Line Exception and new Development Line rules will benefit oceanfront property owners by allowing the potential utilization of a more favorable measurement line for new or re-development. Additionally, it provides new construction management options to local governments that under current rules may have prevented them from

installing large-scale beach nourishment projects, which offer greater short-term storm protection to oceanfront property owners, in order to avoid having a Static Vegetation Line. These potential benefits are tied to complex factors, like amenities and the presence of sandbags, that drive local, regional, national and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

If a community with a Static Vegetation Line Exception or Development Line maintains its beach fill project and vegetation grows oceanward, oceanfront property owners could see a positive effect on their property value. In current Static Vegetation Line Exception rules (15A NCAC 07H .0306(a)(12)), a new structure's oceanward placement is limited its adjacent neighbors. If a community chooses the Development Line alternative, it is possible that a property owner could build more oceanward than current SVL Exception rules permit, thus potentially allowing a property owner more space for construction of a larger structure only if setback requirements can be met. Without having a Development Line and contextual historic property value data available, the ability to evaluate and quantify potential economic benefits gained in this scenario is not possible at this time. Given that there are very few empty lots on the oceanfront, the potential for oceanward placement of new structures is considered very minimal.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, no impacts to NCDOT permitting are anticipated from the proposed amendments to 15A NCAC 07H .0305, 15A NCAC 07H .0306 and the proposed new Development Line rule 15A NCAC 07J .1200. The new and amended rules do not create any new procedures or restrictions that would affect NCDOT permits. Development such as roads, parking lots, and other public infrastructure such as utilities continue to have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event NCDOT needs to build or maintain a road located within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

Division of Coastal Management:

The Division of Coastal Management's permit review process will not be changed by these amendments and DCM does not anticipate changes in permitting receipts due to the proposed action. Review of existing Static Vegetation Line Exception reports require approximately 8 hours of staff's time for each community every five years, for a combined recurring total cost to range between \$1,500 and \$2,000 whereas a Development Line alternative would only require a one-time review of the surveyed Development Line. In either case, there would be no increased cost for staff's time as a direct result of the proposed rules and amendments. However, there could be a minimal cost savings should communities choose the Development Line alternative since it only requires a one-time review.

Cost/Benefit Summary

The proposed amendments to 15A NCAC 07H .0305, 15A NCAC 07H .0306, 15A NCAC 07J .1201 and adding the proposed Development Line rule 15A NCAC 07J .1300, will have modest cost impacts on local governments depending on whether they choose to adopt a Development Line or apply for a Static Line Exception. The benefits to local governments and private property

owners are assumed to be the same regardless which of the two options is selected, as are the opportunity costs if neither option is chosen.

- Development Line requires an estimated initial cost of \$5,000 to adopt; and no cost to maintain.
- Static Line Exception requires average initial cost of \$9,000 to adopt; and an average five-year recurring cost of \$3,500 to maintain.

Appendix A

PROPOSED DEVELOPMENT LINE PROCEDURES AND AMENDMENTS TO THE GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS AND STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
 - (A) the growth of vegetation occurs, or
 - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).
- (4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.
- (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.
- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.
- (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:
 - (A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
 - (B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.
 The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.
- (10) Development Line. The line established in accordance with 15A NCAC 07J.1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have approved development lines, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H.0306(a)(2).

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07I .0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
 Eff. September 9, 1977;
 Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;
 Temporary Amendment Eff. October 10, 1996;
 Amended Eff. January 1, 1997;
 Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
 Temporary Amendment Eff. October 22, 1997;
 Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's Rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with sub-sections (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established below the mean high water line.
- (4) The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;

- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

~~(2)~~(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)~~(2)~~(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)~~(2)~~(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.

~~(3)~~(6) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune, ~~or the ocean hazard setback, or development line,~~ whichever is farthest from vegetation line, static vegetation line, ~~or measurement line,~~ whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward

of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

~~(4)~~(7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune, ~~or landward of the~~ ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.

~~(5)~~(8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

~~(6)~~(9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

~~(7)~~(10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

~~(8)~~(11) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line ~~provides may provide~~ less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section unless a development line has been approved by the Coastal Resources Commission.

~~(9)~~(12) ~~However, in~~ In order to allow for development landward of the large-scale beach fill project that ~~is less than 2,500 square feet and~~ cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and ~~(2)(A)(5)~~ of this Paragraph, a local government ~~or community group of local governments involved in a regional beach fill project, or qualified owner's association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one (1) mile of ocean shoreline~~, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;

~~(B)~~ ~~Total floor area of a building is no greater than 2,500 square feet;~~

~~(C)(B)~~ Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

~~(D)(C)~~ No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

~~(E)(D)~~ With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

~~(F)(E)~~ Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2013.*

SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government, group of local governments involved in a regional beach fill project, qualified owner's association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one (1) mile of ocean shoreline, or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line

pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after ~~five years have passed since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less ~~than 3025~~ years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff. March 23, 2009.*

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

- (a) Any local government, group of local governments involved in a regional beach fill project or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of this Section. A qualified owner's association is an owner's association defined in NCGS 47F-1-103-(3) that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one (1) mile of ocean shoreline.
- (b) A development line request applies to the entire large scale project area as defined in 15A NCAC 07H .0305(a)(7), and at the petitioner's request may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.
- (c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction.
- (d) An existing structure that is oceanward of an approved development line can remain in place until damaged greater than fifty percent in accordance with 15A NCAC 07J .0210; and can only be replaced landward of the development line, and must meet the applicable ocean hazard setback requirements as defined in 15A NCAC 07H .0306(a).
- (e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the Director of the Division of Coastal Management (DCM). A complete request shall include the following:
- (1) A detailed survey of the development line using on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner's association.
 - (2) The survey shall include the development line and static vegetation line.
 - (3) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;
- (f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a change or reestablishment of the position of the development line.
- (g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.
- (h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff.

15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

- (a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:
- (1) A representative for the petitioner shall orally present the request described in 15A NCAC 07J .1301. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations.
 - (2) Additional persons may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in 15A NCAC 07J .0301. The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.
- (c) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

Eff.

15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

A list of development lines in place for petitioners and any conditions under which the development lines exist, including the date(s) the development lines were approved, shall be maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124
Eff.